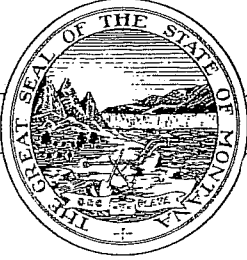


# MONTANA PUBLIC DEFENDER COMMISSION



BRIAN SCHWEITZER  
GOVERNOR

JAMES PARK TAYLOR  
CHAIRMAN

## STATE OF MONTANA

Phone: (406) 496-6080  
Fax: (406) 496-6098

44 WEST PARK STREET  
BUTTE, MONTANA 59701

December 15, 2006

 **DRAFT**

**EXHIBIT** 2

Governor Brian Schweitzer  
The Montana Legislature  
The Montana Supreme Court  
Helena, MT 59620

RE: Montana Public Defender Commission Report to the Governor, Legislature and Supreme Court

Dear Governor Schweitzer, Legislators, and Supreme Court Justices,

Pursuant to 47-1-105 (9), MCA, the Office of the State Public Defender must provide the following report:

A. Report Name: Montana Public Defender Commission Report to the Governor, Legislature and Supreme Court

B. Description of Report:

1. All policies and procedures in effect for the operation and administration of the statewide public defender system and all standards established or being considered by the commission or the chief public defender. This information will be available at <http://www.publicdefender.mt.gov/docs/policy/PoliciesTableofContents.pdf>.
2. The number of deputy public defenders and the region supervised by each; the number of public defenders employed or contracted within the system, identified by region; and the number of attorney and non attorney staff supervised by each deputy public defender. This information will be available at <http://www.publicdefender.mt.gov/docs/reports/reportstaffing.pdf>.
3. The number of new cases in which counsel was assigned to represent a party, identified by region, court and case type; and the total number of persons represented by the office,

- identified by region, court and case type. This information will be available at [www.publicdefender.mt.gov](http://www.publicdefender.mt.gov).
4. The annual caseload and workload of each public defender, identified by region, court and case type. This information will be available at [www.publicdefender.mt.gov](http://www.publicdefender.mt.gov).
  5. The training programs conducted by the office and the number of attorney and non attorney staff who attended each program; and the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted within the system. This information will be available at <http://www.publicdefender.mt.gov/docs/reports/reporttraining.pdf>.
  6. Detailed expenditure data by court and case type. This information will be available at [www.publicdefender.mt.gov](http://www.publicdefender.mt.gov).

Sincerely,

James Park Taylor  
Chairman

**OFFICE OF THE STATE PUBLIC DEFENDER  
POLICIES AND PROCEDURES**

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## **Office of the State Public Defender Administrative Policies**

Subject: <b>Determination of Indigence</b>	Policy No.:
Title <b>47</b>	Pages: <b>7</b>
Section: <b>1-111</b>	Revision Date:
Effective Date: <b>7-1-06</b>	Effective Date:

### **1.0 POLICY**

- 1.1** The Office of the State Public Defender (hereinafter State Office) will provide public defender services to applicants that qualify under 47-1-111, MCA.
- 1.2** Beginning July 1, 2006 all district and limited courts will order the Office of the State Public Defender to assign counsel prior to the determination of indigence.

### **2.0 PREPARATION AND DELIVERY OF INDIGENCE FORM**

- 2.1** Beginning July 1, 2006 all district and limited courts will send appointment forms to Regional Public Defender Offices. The appointment form is provided by the State Office, and provides information about the applicant for public defender services.
- 2.2** The State Office shall provide the Regional Public Defender Offices with Indigence Determination (ID) forms as prepared by the State Office and approved by the Montana Public Defender Commission.
- 2.3** Regional Deputy Public Defenders or their staff will deliver forms to all jails and courthouses and any other venue deemed appropriate.
- 2.4** An applicant for public defender services will be assigned provisional counsel prior to the determination of the applicant's indigence.
- 2.5** An applicant for public defender services must complete the ID form, sign it, and return it to the Regional Public Defender Office.
- 2.6** Indigence Determination Specialists (IDS), appointed by each Regional Public Defender Office, will aid any applicant requesting assistance. Information on the ID form is confidential.

### **3.0 DETERMINATION OF INDIGENCE**

- 3.1** The IDS will review the ID form, fill in any missing information, and assure that the ID form is signed by the applicant.
- 3.2** The IDS will conduct two tests to determine if an applicant is eligible for state public defender services.
  - A.** The first test is a "Gross Household Income (GHI) Test" that gathers all gross income from all occupants in the applicant's household. This GHI is compared to the Gross Income Guidelines (GIG) as provided in Attachment A to this policy. If the GHI dollar amount is less than the

dollar amount listed on the GIG the applicant passes this test. If the applicant fails the first test the IDS must go to the second test.

- B. When the IDS determines that an applicant seeking public defender services is not clearly indigent within the meaning of subsection A above, the IDS shall then determine if the applicant qualifies because retaining competent private counsel would result in substantial hardship to the applicant or his household. This second test reviews both the disposable income and assets of the applicant. Disposable income is Gross Household Income less all expenses (rent, utilities, food, medical and loan payments, child support, etc). Assets are things that can be used as collateral to obtain loans, like homes, land, automobiles, investments, etc. This test is rather subjective in that the IDS must make the determination that the applicant can obtain, without substantial hardship, competent private legal counsel by paying legal retainers from net monthly income or borrowings on assets. The crime charged shall also be a factor considered in this determination.
- 3.3** If the applicant passes either test they are eligible for services. If qualifying under subsection B above, the person may, as appropriate be asked to repay some or all of the costs of representation.
- 3.4** If qualified under either subsection, the court before which the person is appearing will be advised that the person has qualified for public defender representation.
- 3.5** If the IDS has a question regarding an applicant's eligibility for public defender services, the Indigence Determination Officer (as appointed by the Chief Public Defender) will make a ruling.
- 3.6** If the applicant is eligible for public defender services, a written notice of approval shall be sent to the applicant, and the appropriate public defender office, contract attorney, or conflict coordinator.
- 3.7** Applicants approved for public defender services will be subject to eligibility review by the IDS every six months. If an applicant is found to be financially able to provide for their own defense they will be notified by the IDS and parts 3.6 through 3.9 of this policy and procedure will apply.
- 3.8** If the applicant does not qualify for public defender services, a written notice of disqualification and notice of the right to have the court review the finding will be sent to the applicant.
- 3.9** The Regional Deputy Public Defender shall immediately notify the court of record when it is determined that an applicant does not qualify for public defender services (refer to the Attachment B, Standard Letter of Notification, and Attachment C, Notice of Determination Regarding Indigency).
- 3.10** The judge must rescind the appointment of counsel when notified that an applicant does not qualify for public defender services.
- 3.11** A judge may overrule a determination that an applicant is not eligible for public defender services. If overruled, the State Office will provide public defender services to the applicant.

#### **4.0 REIMBURSEMENT OF ATTORNEY FEES**

- 4.1** If the applicant qualified under 3.2 (B) (substantial hardship), and the applicant is found guilty by plea or trial, the Regional Deputy Public Defender or his/her designee shall determine the amount owed for public defender services.
- 4.2** If it appears that the defendant is unable to repay defense costs, and will not be able to repay defense costs, then pursuant to MCA §46-8-113 counsel for the defendant shall resist any attempt by the court to impose defense costs as a condition of sentencing. If the defendant has some ability to pay, then in determining both the amount and method of payment any payment plan must take into consideration the financial resources of the defendant and the nature of the burden that payment of costs will impose.
- 4.3** The hourly rate for public defender services is set at \$71.00;
  - A. The amount of time spent on a case shall conform to the amount of time reported on the public defenders timesheet.
  - B. A copy of the bill along with notification of where payments shall be made will be provided to the client.
- 4.4** If the person is acquitted or the charges are dismissed, no reimbursement will be sought.

#### **5.0 CLOSING**

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

**ATTACHMENT A**  
**GROSS INCOME GUIDELINES**

<u>Number of Persons in Household</u>	<u>Gross Household Income Guidelines</u>
1	\$13,034
2	\$17,556
3	\$22,078
4	\$26,600
5	\$31,122
6	\$35,644
7	\$40,166
8	\$44,688
Each Additional Member Add:	\$4,522

**ATTACHMENT B**  
**STANDARD LETTER OF NOTIFICATION**

Name  
Regional Deputy Public Defender  
Region (#)  
(Address)

(Date)

(Client Name)  
(Client Address)

Dear (Client):

Please be advised that in applying the criteria outlined in Section 47-1-111, MCA, to the information you provided on your indigency questionnaire, I have determined that you do not qualify for public defender services. The public defender who is currently representing you will ask the Court to rescind the appointment of the Office of Public Defender. Until that occurs, your public defender will continue to represent you until you hire a private attorney. You are encouraged to hire a private attorney as soon as possible.

If you do not agree with this determination, you have the right to ask the judge in your case to review your financial status. If you do ask for review, we are required to make your indigency questionnaire available to the judge and the prosecutor for inspection.

Sincerely,

Regional Deputy Public Defender  
Region (#)



**ATTACHMENT C**

**NOTICE OF DETERMINATION REGARDING INDIGENCY**

Name  
Regional Public Defender  
Region (#)  
(Address)

Telephone:

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

---

STATE OF MONTANA,	)	
	)	Cause No. _____
Plaintiff,	)	
	)	
v.	)	NOTICE OF DETERMINATION
	)	REGARDING INDIGENCY
_____	)	
	)	
Defendant.	)	

---

COMES NOW, (RDPD), attorney for Defendant, (Name), and hereby notifies the Court that Defendant does not meet the criteria set out in Section 47-1-111, MCA, to be eligible for representation by the Office of Public Defender.

The Defendant has been notified of this determination as well as his right to ask this Court to review the determination.

(Name), who has been assigned to represent Defendant, will continue to represent Defendant until this court rescinds the appointment of the Office of the Public Defender.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
(Name)  
Regional Deputy Public Defender  
Region (#)

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing NOTIFICATION OF DETERMINATION, postage prepaid, by U.S. mail, to the following:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_

# Office of the State Public Defender

## Administrative Policies

Subject: <b>Client Grievance Procedure</b>	Policy No.:
Title:	Pages: 2
Section:	Revision Date:
Effective Date: <b>7/1/06</b>	Effective Date:

### 1.0 POLICY

- 1.1** The Office of the State Public Defender (hereinafter State Office) has established the following procedures for clients alleging grievance against the public defender attorney assigned to the client's case.

### 2.0 PROCEDURE

#### 2.1 WRITTEN COMPLAINT

Any client alleging grievance against the public defender attorney assigned to the client's case shall complete a written statement of grievance and submit it to the appropriate regional deputy public defender.

#### 2.2 IMMEDIATE ACTION ON WRITTEN COMPLAINT

Upon receipt of a signed, written complaint against a public defender, the regional deputy shall take the following immediate action:

- A. Contact the complainant (either in person or via telephone call) for the purpose of obtaining further clarification regarding the facts alleged;
- B. Provide the respondent attorney with a complete copy of the complaint and follow up statement, if any;
- C. Carefully review the complaint; and
- D. Meet in person with the respondent attorney to discuss appropriate action to be taken.

#### 2.3 WRITTEN DECISION BY REGIONAL DEPUTY DEFENDER

Following step 2.2, the regional deputy shall make an initial decision regarding action, if any, to be taken by the respondent attorney and shall, thereafter, advise the complainant of the decision in writing.

#### 2.4 DETERMINATION DENYING CHANGE OF COUNSEL; APPEAL PROCESS

- A. Failure of the complaint to set forth adequate grounds for change of counsel: if the regional deputy determines that the complaint fails to establish adequate grounds for change of counsel, the regional deputy shall so advise the complainant in writing on a form approved by the chief public defender. In addition, the regional deputy shall personally notify the complainant of the decision in person or via telephone call. Any decision denying a complainant's request for change of attorney shall inform the complainant of the right to file a request for further review by

the grievance review officer for office of the public defender, as designated by the chief public defender.

- B. Appeal to Grievance Review Officer: If the complainant disagrees with the decision of the regional deputy defender, the complainant shall notify the regional deputy of that fact at the time the regional deputy notifies the complainant of the fact of denial. In such event, the regional deputy shall mail the grievance packet (containing a copy of the original complaint and a copy of the regional deputy's decision) to the Grievance Officer at his/her address of record.
- C. Review and Decision by Grievance Officer: Within three working days of receipt of a grievance packet, the Grievance Officer shall issue a written decision either upholding the regional deputy's decision or reversing it with instructions to implement an immediate change of counsel. The Grievance Officer may, but is not required to, consult with the complainant prior to issuing the decision. If the Grievance Officer upholds the decision to deny a change of counsel, the Grievance Officer shall notify the complainant in person of the fact that the complainant retains the right to request a change of counsel from the appropriate court.
- D. Motion for change of counsel: If the complainant decides, after proper notification from the Grievance Officer, that the complainant nonetheless wishes to pursue the grievance with the court of record, the Grievance Officer shall notify counsel of record in writing to immediately file an appropriate motion.

## **2.5 DETERMINATION APPROVING CHANGE OF COUNSEL**

Adequacy of the complaint to support change of counsel: If the regional deputy decides that the complaint does provide adequate grounds for change of counsel, the regional deputy shall immediately effectuate a substitution of counsel and shall advise the complainant, the attorney of record, new counsel, and the court. Reasons for the change shall be documented in the regional deputy's file but shall not be provided to the court, to new counsel, or to opposing counsel. The notice of substitution shall conform to standard pleadings of the jurisdiction.

## **3.0 CLOSING**

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

# Office of the State Public Defender

## Administrative Policies

Subject: <b>Assigning Cases</b>	Policy No.:
Title	Pages: <b>1</b>
Section:	Revision Date:
Effective Date: <b>7/01/06</b>	Effective Date:

### 1.0 POLICY

1.1. Upon the receipt of a Notice of Appointment of the Public Defender Office or receipt of a case in any other fashion, the following are the responsibilities of the Regional Deputy Public Defender:

- A. When a private attorney is being used:
  - i. Determine whether the private attorney is willing to be assigned to the case;
  - ii. Prepare and file with the court from which the case comes, a notice of who will be the attorney of record;
  - iii. Send a copy of the notice to the private attorney who has agreed to handle the case;
  - iv. Keep a permanent file of said notices;
  - v. Maintain a database of appointments on a system determined by the Office of the State Public Defender.
- B. When an attorney in a public defender office is being used:
  - i. Submit the information concerning the case to the Public Defender Office.

1.2. Upon the receipt of a case from the Regional Deputy Public Defender, the Managing Attorney in a Public Defender Office will:

- A. Assign the case to an attorney in the office;
- B. Prepare and file with the court from which the case comes, a notice of who will be the attorney of record;
- C. Maintain a database of appointments on a system determined by the Office of the State Public Defender.

### 2.0 CLOSING

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

## Office of the State Public Defender Administrative Policies

Subject: <b>Time Reporting</b>	Policy No.:
Title	Pages: <b>1</b>
Section:	Revision Date:
Effective Date: <b>7/01/06</b>	Effective Date:

### 1.0 POLICY

- 1.1 All attorneys employed by the Office of Public Defender shall maintain and report work time for each case to which they are assigned.
- 1.2 In maintaining and reporting time, each attorney will:
  - A. Report time worked on each case on a bi-weekly basis consistent with pay periods;
  - B. Designate each case by:
    - i. Office of Public Defender number and
    - ii. Amount of time spent during each week;
  - C. Report time in increments of .10 of an hour;
  - D. Transmit electronically, by the Monday of the following week, the compilation of time worked on each case to the regional administrative assistant or public defender office manager on the forms provided.

### 2.0 CLOSING

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

**OFFICE OF THE PUBLIC DEFENDER**  
**ATTORNEY PRO BONO POLICY**

1. PURPOSE AND SCOPE. This policy addresses the performance of pro bono legal services by attorneys employed in the executive branch of government, excluding attorneys employed by the secretary of state, attorney general, auditor, superintendent of public instruction, and public service commission, who are subject to the policies promulgated by those officers.

2. DEFINITIONS.

2.1 "Pro bono legal services" means legal services described in Mont.R.Prof.Conduct 6.1, which are performed without the expectation of compensation for:

- a. low income low income individuals who otherwise lack the ability to retain attorneys to provide legal services for them;
- b. charitable, civic, community, governmental, health and education organizations in matters which are designed to assist person of limited means;
- c. individuals, groups or organizations seeking to secure or protect civil rights; or
- d. improve the law, legal system or the legal profession.

3. GENERAL POLICY. Approximately 190,000 low income Montanans are eligible for free legal assistance from the Montana Legal Services Association ("MLSA") based on applicable income eligibility guidelines. Currently MSLA is staffed at a level of one attorney for each 17,270 eligible recipients. This compares with a ratio of one Montana attorney for every 330 residents. The Helena MLSA office has one full-time lawyer devoted to more than four counties. By any standard, there is a large unmet need for legal services for low income persons in Montana. The Montana Supreme Court has adopted a Rule of Professional Conduct that "[e]very lawyer has a professional responsibility to provide legal services to those unable to pay" and that "[a] lawyer should render at least 50 hours of pro bono publico legal services per year." Mont.R.Prof. Conduct 6.1. It is the policy of the Public Defender's Office to encourage attorneys to volunteer to provide pro bono legal services in compliance with this policy and other applicable provisions of Montana law and the Montana Rules of Professional Conduct for lawyers.

#### 4. USE OF AGENCY RESOURCES.

4.1 Hours of Work. Executive branch attorneys are encouraged to seek pro bono opportunities that can be accomplished outside of scheduled working hours.

However, pro bono legal services activities may sometimes occur during work hours. Supervisors are encouraged to be flexible and to accommodate, where feasible, the efforts of the attorneys they supervise to perform pro bono services. Employees seeking to participate in pro bono activities during regularly scheduled work hours may be granted annual leave, compensatory time off, or leave without pay, consistent with policies governing the use of such leave by state employees generally. Supervisor's decisions as to the authorization of leave may not be influenced by a supervisor's personal views regarding the substance of the pro bono activity.

4.2 Use of Office Equipment. Pro bono legal services are services provided in the public interest and in satisfaction of an ethical obligation of all attorneys to ensure that legal services are made available to persons of limited economic means. The Congress of the United States has recognized that this is not a private matter by authorizing the expenditure of tax dollars for the support of the national Legal Services program. Pro bono legal services therefore do not constitute the "private business" of the attorney for purposes of Mont. Code Ann. § 2-2-121(2)(a). Nevertheless, respect for the public trust requires that public agency attorneys refrain from inappropriate use of state resources for purposes not connected to the agency's mission. Use of law books or on-line resources for which there is no usage-based charge in the performance of pro bono services involves only a negligible additional expense, if any, and is therefore permissible. When office computers, printers, and telephones are used in moderation for pro bono legal services, there is only negligible additional expense to the State for electricity, ink, and wear and tear, and such use therefore is permissible as long as the agency is reimbursed for supplies in accordance with Section 8, below.

This policy does not authorize the use for pro bono services of commercial electronic services for which there is a usage-based charge to the State.

Consistent with this policy, executive branch attorneys may use office telephone and facsimile machines for essential pro bono-related communication as long as no long distance or other additional usage-based charges to the State are incurred, the agency is



reimbursed for any fax paper used in connection with the pro bono services, and the usage does not interfere with official business.

This policy does not supersede agency policies designed to protect the safety or security of computer or local area network operations. Any use of agency-provided equipment for pro bono activities must be consistent with such policies.

This policy is also subject to any restrictions arising from law or contract on the use of agency equipment or supplies.

Executive branch attorneys should contact their supervisors if there is any question as to whether an activity involves "negligible additional expense," interferes or threatens to interfere with official business, and is consistent with agency computer security policies or legal or contract restrictions on use of equipment or supplies.

4.3 Clerical Support. An attorney may not assign or otherwise require pro bono legal services of clerical or administrative support personnel. Office support personnel who are willing to volunteer to assist with the provision of pro bono legal services by agency attorneys may do so as long as the volunteer work does not interfere with the performance of the primary responsibilities to official duties. Professional support staff who serve as volunteers in pro bono services shall take leave or compensatory time for time used during the work day or develop a flexible work schedule with their supervisor in accordance with office policy.

4.4 Letterhead. A public defender attorney may not use office letterhead or agency or office business cards in the performance of pro bono legal services.

## 5. CONFLICT OF INTEREST.

5.1 General. Public defender attorneys are bound by the Rules of Professional Conduct for attorneys and the ethical rules governing state employees to avoid conflicts of interest. These attorneys may not accept pro bono clients in matters which create or appear to create a conflict of interest with their work for the State. Such a conflict exists, among other situations, if a pro bono representation would require the attorney's recusal in a matter involved in the attorney's official duties.

5.2 Prohibited actions. Given the public defender's role in criminal cases and in cases involving the State of Montana, public defender attorneys may not undertake pro bono representation in any case involving: (a) actual or suspected abuse against a partner or family member, or any other criminal conduct by one or both

parties: or (b) an administrative or judicial proceeding in which the State of Montana or any political subdivision thereof is a party, or in which state interests are likely to be involved, *except* that a public defender attorney may participate in a case in which the State of Montana Department of Public Health and Human Services ("DPHHS") is providing child support enforcement services under Title IV-D of the Social Security Act to one or more of the parties. [See Mont. Code Ann. § 40-5-202(5)]. In any such case, the public defender attorney must make it clear to both the client and DPHHS that the attorney is acting in his or her individual capacity and that the attorney will not continue to represent the client should there be an appeal to the Montana Supreme Court.

## 6. FORMALITIES OF REPRESENTATION.

6.1 Retainer Agreement. Public defender attorneys subject to this policy shall use the model retainer agreement attached to this policy, making explicit to a pro bono client that the attorney is acting in his or her individual capacity and not as a representative of the State of Montana. The client must sign the agreement acknowledging that fact.

6.2 Malpractice Insurance. The State of Montana does not provide malpractice insurance coverage for the pro bono activities of its attorneys, since such activities are outside the course and scope of the attorneys official duties. See Mont. Code Ann. § 2-9-305.

7. USE OF OFFICIAL POSITION OR PUBLIC OFFICE. Public defender attorneys subject to this policy who provide pro bono legal services may not indicate or represent in any way that they are acting on behalf of the State or any agency or office of the State, or in their official capacity. The incidental identification of the public defender attorney as a State agency employee - for example, when an office post office box address or telephone number is used - is not prohibited. The public defender attorney is responsible for making it clear to the client, any opposing parties, or others involved in the pro bono case, that the attorney is acting in his or her individual capacity as a volunteer and not as a representative of the State or any of its agencies. Generally, state offices may not be used for meetings with clients or opposing counsel in a pro bono case unless the office space is a common area in building not associated only with the public defender's office.

8. REIMBURSEMENT. Public defender attorneys subject to this policy must reimburse their agencies for costs associated with printing, photocopying, long distance telephone charges, or faxing. When a public defender attorney accepts a pro bono case, the attorney

shall keep a log of the number of pages printed on office printers, the number of pages copied on office photocopiers, and the number of pages received over an office facsimile machine. The attorney shall reimburse the state at the rate of fifteen cents per page, payable in one lump sum by May 31 of each fiscal year. Public defender attorneys should use their personal credit cards for any long distance phone charges; however, if a long distance telephone call must be made that results in a charge to the state, the attorney shall report the call on the case log and reimburse the office for the actual amount of the call. The attorney shall request prior permission from his or her supervisor if the anticipated costs exceed \$50 per case.

9. DISCLAIMER. This policy is intended only to encourage increased pro bono activities by public defender attorneys and is not intended to create any right or

benefit, substantive or procedural, enforceable at law by any party, against the State of Montana, its agencies, officers, or any person.

10. PERSONAL FAMILY LEGAL MATTERS. Notwithstanding any other provision of this policy, a public defender attorney may perform personal and family legal services, including counseling family members in matters involving criminal law, provided the activity does not interfere with the proper and effective performance of the attorney's official duties.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2006.

\_\_\_\_\_  
RANDI HOOD, Chief Public Defender  
Office of the Montana State Public Defender

## RETAINER AGREEMENT

The undersigned client [CLIENT] engages the undersigned attorney (ATTORNEY) for legal representation in the following matter:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTORNEY will make no charge to the client for attorney fees in the matter. CLIENT acknowledges that ATTORNEY is acting in ATTORNEY'S individual capacity and is not acting as a representative of the State of Montana, Department/Office of \_\_\_\_\_, or any other state agency.

CLIENT will cooperate fully with ATTORNEY and will provide all information known by or available to CLIENT which may aid ATTORNEY in representing CLIENT.

CLIENT authorizes and directs ATTORNEY to take all actions which ATTORNEY deems advisable on CLIENT's behalf. ATTORNEY agrees to notify CLIENT promptly of all significant developments and to consult with CLIENT in advance as to any significant decisions concerning those developments.

ATTORNEY will represent CLIENT diligently but makes no promises or representations as to the success of those efforts. ATTORNEY may terminate representation of CLIENT: (1) if ATTORNEY believes further action is not justified on behalf of CLIENT, or (2) if CLIENT does not cooperate with ATTORNEY.

CLIENT is responsible for any costs incurred other than attorney's fees. Efforts shall be made to waive costs whenever possible.

This Retainer does not cover an appeal. In the event an appeal becomes possible, ATTORNEY will decide at that time whether or not to further represent CLIENT.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CLIENT

\_\_\_\_\_  
ATTORNEY

## Office of the State Public Defender Administrative Policies

Subject: <b>Contract Counsel</b>	Policy No.:
Title: <b>47</b>	Pages: 2
Section:	Revision Date:
Effective Date: <b>7-1-06</b>	Effective Date:

### 1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) may enter into contracts with outside counsel to provide services pursuant to the Montana Public Defender Act (Act).
- 1.2 District court judges, the Supreme Court Administrator, and the counties may not contract for public defender/indigent defense services in those cases deemed the responsibility of the OPD under the Act.
- 1.3 State contracts are viewed as a cost-effective manner in which to ensure that public defender/indigent defense services are available in those areas where full time staff public defender services are unavailable, when conflict situations arise, or to alleviate workload issues.

### 2.0 PROCEDURE

- 2.1 Prospective contract counsel must complete the Attorney's Summary of Education and Experience as provided on the OPD website at <http://publicdefender.mt.gov>.
- 2.2 Upon receipt of the Attorney's Summary of Education and Experience information, the OPD will review this information and provide qualified applicants with a Memorandum of Understanding (MOU).
- 2.3 Prospective contract counsel acknowledge that they have read and agree to abide by the Public Defender Standards of Conduct by signing the MOU and returning it to the OPD. The MOU also requires that contract counsel complete Continuing Legal Education training annually, as determined by the Public Defender Commission.
- 2.4 Prospective contract counsel are then placed in a pool based on their qualifications and the Region(s) in which they choose to work.
- 2.5 The Regional Deputy Public Defender is responsible for assigning specific cases to attorneys from the regional pool, ensuring that the attorney has the qualifications to handle the specific type of case being assigned.
- 2.6 The Regional Deputy Public Defender will monitor the performance of the contract counsel and will participate in the annual evaluation of each contract counsel.

### 3.0 PAYMENTS FOR SERVICES

- 3.1 The OPD shall directly pay contracted counsel for services rendered.
- 3.2 Contract counsel services shall be paid at the rate of \$60 per hour for non-death penalty cases, and at the rate of \$120 per hour for death penalty cases.
- 3.3 Pre-approved travel expenses shall be paid at the state travel rates.

- 3.4** OPD shall offer a stipend of up to \$25 per month to help defray office costs such as telephone, postage, and copies.
- 3.5** Other expenses shall be paid as pre-approved under OPD procedures.

#### **4.0 PAYMENT AND PROCEDURES**

It is understood that contract counsel services will be supervised by the Regional Deputy Public Defender and the OPD.

Contracted counsel shall submit an itemized claim on the standard payment form provided by OPD. This form and accompanying instructions are posted on the OPD web site at <http://publicdefender.mt.gov>. Hourly time shall be broken down into six minute increments. Each form **must** contain the case number **assigned** by the Regional Office. Said form shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the State Office. The OPD will review, approve and pay said claim within thirty (30) days of receipt of the same. Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the **assigned** case number.

#### **5.0 CLOSING**

Questions about this policy should be directed to the OPD at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

**POLICIES AND PROCEDURES  
PROFICIENCY DETERMINATIONS  
CONTRACT COUNSEL**

Each private attorney providing contract services to the Montana Office of the State Public Defender shall undergo a proficiency determination on an annual basis.

The proficiency determination shall be conducted by a combination of the following:

1. Chief Public Defender; and
2. OPD Training Coordinator; and / or
3. Regional Deputy Public Defender from the region within which the contract attorney renders contract services; and / or
4. OPD Contracts Manager.

In making the proficiency determination, OPD will observe the contract attorney in court and may, in the discretion of the Chief Public Defender, obtain information from any of the following:

1. Clients;
2. The Regional Deputy Public Defender from the region within which the contract attorney renders contract services;
3. Judges and other court personnel;
4. Faculty from any training programs which the contract attorney attends during the preceding contract year.

OPD shall meet with the contract attorney once a year as part of the annual proficiency determination.

As a condition of performing any contract services for OPD, the contract attorney shall complete and submit the OPD "Experience Survey."

OPD shall maintain the completed "Experience Survey" on file and shall ensure that said "Survey" is updated annually.

Upon completion of the annual proficiency determination, OPD shall certify the contract attorney's proficiency within any area of public defense law in Montana unless OPD determines, following the annual proficiency determination, that the contract attorney is not proficient.

If OPD certifies proficiency, the contract attorney shall sign the proficiency certification form. Once the Chief Public Defender and the contract attorney have signed the proficiency evaluation, a copy will be provided to the contract attorney.

If OPD determines, following the proficiency determination, that the contract attorney is not proficient:

1. OPD shall immediately inform the contract attorney of its determination;
2. OPD shall recommend remedial training or other steps aimed at permitting the contract attorney to regain proficiency;
3. The contract attorney may request a meeting with the Chief Public Defender and may also submit a written objection.

Originals of all records generated in the course of the proficiency determination process will be placed in the contract attorney's OPD file and maintained throughout the duration of time that the contract attorney is rendering professional services for the OPD, and then for as long as is required by state retention of records policy.



# Office of the State Public Defender

## Administrative Policies

Subject: <b>Accounting Reports</b>	Policy No.:
Title:	Pages: <b>1</b>
Section:	Revision Date:
Effective Date: <b>7/1/06</b>	Effective Date:

### 1.0 POLICY

- 1.1** The Office of the State Public Defender will provide monthly SABHRS-produced Organization Detail Reports to the Chief Public Defender, Administrative Director, and all Department and Regional Managers.

### 2.0 PROCEDURE

- 2.1** The accountant will distribute monthly reports to the staff responsible for each individual office's activities.
- 2.2** Department and Regional Managers will review the monthly reports and report any errors or omissions to the accountant
- 2.3** The Administrative Director will monitor the detailed monthly reports and compare the reports to individual budgets.

### 3.0 CLOSING

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

The Office of State Public Defender  
Overtime And Compensatory Time Policy  
For Non-Exempt Employees  
May 2006

**I. Background**

On April 17, 1989, the Attorney General, of the State of Montana issued an opinion that state and local government employees who are covered by the Federal Fair Labor Standards Act (FLSA), are not subject to the provisions of the Montana Minimum Wage and Hour Act. This opinion allows agencies flexibility in administering overtime provisions for non-exempt employees.

**II. Policy**

It is the policy of the Office of State Public Defender to comply with the FLSA, its regulations (29 CFR 553), state rules (Montana Operations Manual, Volume III, Policy 3-0211), and this policy in the administration of overtime compensation and non-exempt compensatory time. Compensatory time for employees exempt from the FLSA will be administered consistent with the provisions found in the state's Exempt Compensatory Time Policy (MOM, Volume III, Policy 3-0210).

**III. Definitions**

- A. "Non-exempt compensatory time" means time accrued at a rate of one and one-half hours for each hour of employment for which overtime compensation is required pursuant to the FLSA, its regulations, and this policy. Accrued time may be taken as approved time off at a later date.
- B. "Non-exempt or covered employee" means an employee subject to the overtime provisions of the FLSA and its regulations. It does not mean certain employees exempt from the overtime provisions of the FLSA in a position designated as executive, administrative, professional, or outside salesmen, as these terms are defined in 29 CFR 541.
- C. "Overtime" means time worked by a non-exempt employee in excess of 40 hours in a workweek. The rate of overtime pay will be one and one-half times the employee's regular hourly wage, with the exception of on-call reimbursement, which will be reimbursed at the regular rate of pay unless the employee is called in to work.
- D. "Workweek" means a regular recurring period of 168 hours in the form of seven consecutive 24-hour periods. The workweek need not be the same as the calendar week. The workweek may begin on any day of the week and at

any hour of the day. Once established, a workweek may not be changed unless the change is intended to be permanent.

#### **IV. Procedure**

- A. The Office of State Public Defender may grant non-exempt employees who work overtime either cash overtime pay or non-exempt compensatory time off.
- B. If a covered employee would like to accrue and use non-exempt compensatory time, the covered employee must request this option by completing the attached agreement and returning the form to the appropriate supervisor and the Department of Administration, Human Resource Office. Covered employees will be paid cash for overtime hours worked unless they complete the attached agreement. A new employee will make their request at the time of hire. Employees electing to receive non-exempt compensatory time may change their selection to receive overtime on a quarterly basis, such change to be effective with the pay periods of January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup> and October 1<sup>st</sup> unless approved by the Division Administrator.
- C. The Office of State Public Defender may, at any time, pay cash for all or any portion of a covered employee's accrued non-exempt compensatory time balance.
- D. All hours worked in a pay status, with the exception of on-call hours, are counted as hours worked for the purpose of calculating a workweek for overtime pay requirements. A supervisor may adjust a covered employee's work schedule in a workweek or require the employee to take time off without pay so that the employee does not become eligible for the payment of overtime or the accrual of nonexempt compensatory time.
- E. Overtime and non-exempt compensatory time is earned and recorded on the Department's time and attendance form in no smaller than ½ hour increments.
- F. Non-exempt compensatory time must be taken off in no less than one-half hour increments. The employee's immediate supervisor must approve requests for use of compensatory time off in advance.
- G. A non-exempt employee may accrue a maximum balance of 120 hours of non-exempt compensatory time. When the non-exempt compensatory time balance exceeds 120 hours, the covered employee will be paid cash overtime compensation.

- H. If a non-exempt employee changes from non-exempt to exempt status through a personnel action, such as a promotion or the employee terminates employment with the division, the division will cash out any unused non-exempt compensatory time.

**V. Closing**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable

Questions about the administration of overtime compensation or non-exempt compensatory time in lieu of overtime compensation, should be discussed with the your immediate supervisor or the Human Resource Officer at 406-496-6085.

**Approved:**

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Harrison J. Freebourn  
Administrative Director

The Office of State Public Defender  
Overtime/Compensatory Time Selection

For completion by employees in non-exempt status.

NAME: \_\_\_\_\_

JOB TITLE: \_\_\_\_\_

FISCAL YEAR: \_\_\_\_\_

Select one of the following options for your preferred compensation of overtime worked for the fiscal year, or until a new form is submitted.

1. Overtime Pay: \_\_\_\_\_  
(Pay at 1-1/2 times your hourly rate.)
2. Compensatory Time: \_\_\_\_\_  
(Time off at 1-1/2 hours for every overtime hour worked.)

I understand that the Office of State Public Defender management reserves the right to approve the granting of FLSA compensatory time in lieu of overtime pay. The Division may at any time pay cash for all or any portion of a covered employee's accrued FLSA compensatory time. I may submit a selection form reversing my previous selection on a quarterly basis, effective with the pay periods of January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, and October 1<sup>st</sup>.


_____ Employee's Signature	_____ Date
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APPROVED BY:

_____ Supervisor's Signature	_____ Date
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_____ Administrative Director Signature	_____ Date
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OFFICE OF THE STATE PUBLIC DEFENDER  
PERFORMANCE EVALUATION PROCEDURES  
PUBLIC DEFENDERS

 **DRAFT**

Each public defender shall have their work performance evaluated on a yearly basis.

The performance evaluations shall be conducted by a combination of the following:

1. the Chief Public Defender, and;
2. the Training Coordinator and/or;
3. the Regional Deputy Public Defender from the region in which the public defender works and/or;
4. the Managing Attorney from the office in which the public defender works.

Forms attached hereto shall be used for the evaluation.

In conducting the evaluation, the evaluators will observe the public defender in court and may obtain information from any of the following:

1. Clients;
2. Other public defenders working in the office;
3. Office staff;
4. Judicial personnel;
5. Faculty from any training the public defender attends.

The public defender shall be interviewed pursuant to the performance evaluation.

At least two of the persons involved in the performance evaluation shall meet with the public defender to review and discuss the evaluation. If the public defender disagrees with the appraisal, the public defender has the right to submit, within 10 working days of receipt of the appraisal, a written rebuttal to be attached to the document.

A permanent public defender may file a grievance under the state grievance procedure outlined in MOM 3-0115 Performance Management and Evaluation.

Once all parties have signed the performance evaluation, a copy will be given to the public defender. If the public defender refuses to sign the form, the supervisor will document on the form that the public defender refused to sign the document. The original will be placed in the public defender's personnel file along with any written comments received from the public defender. The performance evaluation will be maintained throughout the public defender's employment and retained in compliance with the State Records Retention Schedule.

 **DRAFT**

**Montana Public Defender Commission**  
**REPORT TO THE GOVERNOR, LEGISLATURE AND SUPREME COURT**  
**[47-1-105 (9) (c) (d) (e)]**

**STAFFING REPORT**  
as of 11/21/06

Region	Location	Number of Regional Deputy Public Defenders	Attorney	Non-Attorney	Number of Contractors by Region
1	Kalispell	1	10	6	33
2	Missoula	1	21	13	36
3	Great Falls	1	10	8	30
4	Helena	1	6	4	21
5	Butte	1	6	5	32
6	Havre	1	0	2	23
7	Lewistown	1	0	2	29
8	Bozeman	1	9	8	32
9	Billings	1	14	12	41
10	Glendive	1	0	1	21
11	Miles City	1	1	2	17
<b>Total</b>		<b>11</b>	<b>77</b>	<b>63</b>	<b>315</b>
Total unique contractors**					183

\*number of individual employees, not FTE

\*\*some contractors are available to work in multiple regions

**Montana Public Defender Commission**  
**REPORT TO THE GOVERNOR, LEGISLATURE AND SUPREME COURT**  
**[47-1-105 (9) (i) (j)]**

**TRAINING PROGRAMS CONDUCTED BY THE OFFICE**  
**through 11/16/06**

<u>Date Of Training</u>	<u>Description of Training</u>	<u>Internal Personnel</u>		<u>External Personnel</u>		<u>Totals</u>
		<u>Attorney</u>	<u>Non-Attorney</u>	<u>Attorney</u>	<u>Non-Attorney</u>	
July 1, 2006	Annual Public Defender Training Conference	74	18	44	3	139
August 1, 2006	Investigator Training (Phase I)	-	17	-	-	17
July 14/Aug 1, 2006	Capital Defense Training	4	-	-	-	4
October 1, 2006	Attorney Boot Camp Training Conference	20	-	-	-	20
September 28, 2006	Dealing with Ineffective Assistance Claims	55	-	5	-	60
November 1, 2006	Juvenile Training Conference	15	-	13	12	40
November 1, 2006	Mental Health Issues Training Conference	16	-	3	-	19
November 6, 2006	Lower Court Procedure and Practice	6	-	-	-	6
November 16, 2006	Evaluating Fitness to Proceed	42	-	9	-	51
<b>Totals</b>		<b>232</b>	<b>35</b>	<b>74</b>	<b>15</b>	<b>356</b>



THIS IS A SAMPLE ONLY

OFFICE OF THE STATE PUBLIC DEFENDER  
CASE COUNTS and COSTS by REGION

7/1/06 Through 10/31/06

LOCATION	COURT TYPE	DISTRICT COURTS										LOWER COURTS		TOTALS		PERCENT	
		DC(Criminal) # \$	DG(Guardianship) # \$	DJ(Involuntary) # \$	DJ(Juvenile) # \$	DN(Neglect) # \$	ALL # \$	by Court # \$	Court/Regnt Total # \$								
REGION 1	ALL	650	\$ 65,000	6	\$ 350	12	\$ 10,800	35	\$ 7,000	470	\$ 47,500	185	\$ 18,561	1,358	\$ 149,211	100.0%	100.0%
REGION 2	ALL	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	0.0%	0.0%
REGION 3	ALL	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	0.0%	0.0%
REGION 4	ALL	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	0.0%	0.0%
REGION 5	ALL	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	0.0%	0.0%
REGION 6	ALL	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	0.0%	0.0%
REGION 7	ALL	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	0.0%	0.0%
REGION 8	ALL	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	0.0%	0.0%
REGION 9	ALL	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	0.0%	0.0%
REGION 10	ALL	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	0.0%	0.0%
REGION 11	ALL	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	0.0%	0.0%
ALL	ALL	650	\$ 65,000	6	\$ 350	12	\$ 10,800	35	\$ 7,000	470	\$ 47,500	185	\$ 18,561	1,358	\$ 149,211	100%	100%
PERCENTAGES		47.9%	43.6%	0.4%	0.2%	0.9%	7.2%	2.6%	4.7%	34.6%	31.8%	13.6%	12.4%	100%	100.0%		

THIS IS A SAMPLE ONLY

OFFICE OF THE STATE PUBLIC DEFENDER  
CASE COUNTS and COSTS by REGION

7/1/06 Through 10/31/06

LOCATION	COURT TYPE	DISTRICT COURTS						LOWER COURTS		TOTALS		PERCENT					
		Dc(Criminal) #	\$	Dg(Guardianship) #	\$	Dj(Involuntary) #	\$	DJ(Juvenile) #	\$	DN(Neglect) #	\$	All #	\$	by Court #	\$	Court/Regnt Total #	\$
KALISPELL	COUNTY	250	25,000	2	200	6	6,000	10	5,000	250	25,000	10	-	518	61,200	38.1%	41.0%
COLUMBIA FALLS	CITY	-	-	-	-	-	-	-	-	-	-	10	1,000	10	1,000	0.7%	0.7%
W.FISH	CITY	-	-	-	-	-	-	-	-	-	-	10	1,000	10	1,000	0.7%	0.7%
KALISPELL	JP-ORTLEY	-	-	-	-	-	-	-	-	-	-	10	1,000	10	1,000	0.7%	0.7%
KALISPELL	JP-TRIGG	-	-	-	-	-	-	-	-	-	-	10	1,000	10	1,000	0.7%	0.7%
KALISPELL	MC-ULBRICHT	-	-	-	-	-	-	-	-	-	-	10	1,000	10	1,000	0.7%	0.7%
POLSON	COUNTY	200	20,000	1	50	3	4,500	5	500	100	10,000	50	5,000	50	5,000	3.7%	3.4%
POLSON	CITY	-	-	-	-	-	-	-	-	-	-	61	6,100	309	35,111	22.8%	23.5%
RONAN	CITY	-	-	-	-	-	-	-	-	-	-	5	500	5	500	0.4%	0.3%
ST IGNATIUS	CITY	-	-	-	-	-	-	-	-	-	-	5	500	5	500	0.4%	0.3%
POLSON	JP-POLSON	-	-	-	-	-	-	-	-	-	-	5	500	5	500	0.4%	0.3%
LIBBY	COURT	150	15,000	1	50	2	200	10	500	100	10,000	10	1,000	10	1,000	0.7%	0.7%
EUREKA	CITY	-	-	-	-	-	-	-	-	-	-	10	1,000	10	1,000	0.7%	0.7%
LIBBY	CITY	-	-	-	-	-	-	-	-	-	-	10	1,000	10	1,000	0.7%	0.7%
TROY	CITY	-	-	-	-	-	-	-	-	-	-	10	1,000	10	1,000	0.7%	0.7%
EUREKA	JP-UTTER	-	-	-	-	-	-	-	-	-	-	10	1,000	10	1,000	0.7%	0.7%
LIBBY	JP-HICKS	-	-	-	-	-	-	-	-	-	-	10	1,000	10	1,000	0.7%	0.7%
THOMPSON FALLS	COUNTY	50	5,000	2	50	1	100	10	1,000	20	2,500	10	1,000	83	1,000	0.7%	0.7%
HOT SPRINGS	CITY	-	-	-	-	-	-	-	-	-	-	5	500	5	500	0.4%	0.3%
PLAINS	CITY	-	-	-	-	-	-	-	-	-	-	5	500	5	500	0.4%	0.3%
THOMFALLS	CITY	-	-	-	-	-	-	-	-	-	-	5	500	5	500	0.4%	0.3%
THOMFALLS	JP-SANDERS	-	-	-	-	-	-	-	-	-	-	5	500	5	500	0.4%	0.3%
REGION 1		650	\$ 65,000	6	\$ 350	12	\$ 10,800	35	\$ 7,000	470	\$ 47,500	185	\$ 18,561	1,358	\$ 149,211	100%	100%